

FILED
SCRANTON

JUN 30 2014

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ANDRE S. GANEous,

Petitioner,

v.

DONNA ZICKEFOOSE, WARDEN,

Defendants.

CIVIL ACTION NO. 3:CV-14-443

(Judge Kosik)

ORDER

AND NOW, this 30 day of JUNE, 2014, IT APPEARING TO THE COURT THAT:

(1) Petitioner, Andre S. Ganeous, a prisoner confined at the United States Penitentiary-Canaan, Waymart, Pennsylvania filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. §2241 on March 7, 2014;

(2) In his petition, Petitioner challenges his 1986 conviction and sentence in the District of Columbia Superior Court;

(3) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(4) On March 21, 2014, the Magistrate Judge issued a Report and Recommendation (Doc. 5), wherein he recommended that the petition for writ of habeas corpus be transferred to the United States District Court for the District of Columbia;

(5) Specifically, the Magistrate Judge found that the petition should correctly be filed under 28 U.S.C. §2254, since Petitioner is clearly challenging his 1986 District of Columbia Superior Court conviction and sentence and is considered a state prisoner; that the claims raised by Petitioner that he is actually innocent, that his due process rights were violated and that his District of Columbia trial counsel

was ineffective, arise out of conduct occurring in the District of Columbia; that the records of Petitioner's conviction, transcripts of proceedings, witnesses and counsel are located within the District of Columbia; and, that for the convenience of the parties and witnesses, and in the interest of justice, the instant petition should be transferred to the United States District Court for the District of Columbia pursuant to 28 U.S.C. §1404(a);

(6) Petitioner has filed timely objections to the Magistrate Judge's Report and Recommendation wherein he objects to the Respondent not being directed to respond to the Petition; to his being construed as a state prisoner; to the Magistrate Judge's reference to 28 U.S.C. §2254; and to this court not addressing the claims raised in his §2241 petition;

AND, IT FURTHER APPEARING THAT:

(7) When objections are filed to a Report and Recommendation of a Magistrate Judge, we must make a de novo determination of those portions of the Report to which objections are made. 28 U.S.C. §636(b)(1)(C); see Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989). In doing so, we may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. §636(b)(1); Local Rule 72.3. Although our review is de novo, we are permitted by statute to rely upon the Magistrate Judge's proposed recommendations to the extent we, in the exercise of sound discretion, deem proper. United States v. Raddatz, 447 U.S. 667, 676 (1980); Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

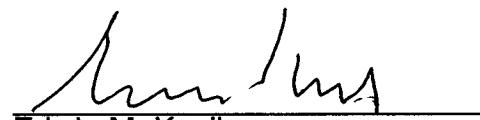
(8) We have reviewed the instant record, and have considered the Magistrate Judge's Report, and we concur with his recommendation.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated March 21, 2014 (Doc. 5) is ADOPTED;

(2) The Clerk of Court is directed to **TRANSFER** the petitioner's petition for writ of habeas corpus to the United States District Court for the District of Columbia; and

(3) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge.



Edwin M. Kosik
United States District Judge